

BILL ANALYSIS

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Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	V. Manuel Perez, et al.	AB 2136

SUBJECT

Disaster Loss Deduction/Excess Loss Carryover/April 2010 Imperial County Earthquake

SUMMARY

This bill would allow special tax treatment, called disaster loss treatment, for losses sustained as a result of the April 2010 Imperial County earthquake.

This analysis will not address the bill's changes to the Property Tax Law, as they do not impact the department or state income tax revenue.

PURPOSE OF BILL

According to the author's office, the purpose of this bill is to provide immediate tax relief to individuals and businesses affected by the earthquake.

EFFECTIVE/OPERATIVE DATE

As an urgency measure, this bill would be effective and operative immediately upon enactment.

ANALYSIS

FEDERAL/STATE LAW

Under federal and state law, a casualty loss is defined as the damage, destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual. A disaster loss occurs when business or personal property is completely or partially destroyed as a result of a fire, storm, flood, or other natural event in an area declared to be a disaster by the President of the United States.

Existing federal and state laws allow an individual taxpayer with a non-business casualty/disaster loss that is not reimbursed, by insurance or otherwise, to deduct such losses to the extent that each loss exceeds \$100 and aggregate net losses for the taxable year exceed 10 percent of adjusted gross income (AGI). Additionally, a taxpayer can elect to file an amended return to deduct a casualty loss in the taxable year prior to the loss year to receive a refund more quickly. However, this election only applies to casualty losses occurring in a Presidentially-declared disaster area. This election may be made for any Presidentially-declared disaster prior to passage of any state legislation allowing special carryover treatment because California conforms to federal disaster tax law treatment. The election is not available for a Governor-only declared disaster until enabling state legislation has been enacted.

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State tax law identifies specific events as disasters and excess disaster losses are allowed special carry forward treatment. That is, 100 percent of the excess disaster loss may be carried over for up to fifteen taxable years. In addition, for disasters that were the subject of a Governor's proclamation but not the subject of a Presidential disaster declaration, enactment of state law identifying a specific event as a disaster for state tax law purposes authorizes the taxpayer to elect to deduct the disaster loss on the return for the prior taxable year.¹

PROGRAM BACKGROUND

Governor Arnold Schwarzenegger proclaimed on April 5, 2010, a state of emergency declaring the earthquake that occurred in Imperial County in April 2010 to be a state disaster. President Obama did not declare this earthquake to be a federal disaster.

THIS BILL

This bill would add the earthquake that occurred in Imperial County in April 2010 to the current list of specified disasters under the Personal Income Tax Law and the Corporation Tax Law and would allow special disaster treatment of losses sustained as a result of this disaster.

Specifically, this bill would allow taxpayers affected by the earthquake to do the following:

- Elect to file an amended return for the prior taxable year to deduct the disaster loss and reduce the prior year tax liability, resulting in an expedited refund; and
- Allow carry forward treatment for up to fifteen taxable years for losses sustained as a result of the earthquake.

Losses sustained to non-business property as a result of the earthquake would have to be greater than the \$100 and the 10 percent of AGI limitations to qualify for disaster loss treatment.

LEGISLATIVE HISTORY

AB 50 (Nava, 2009/2010) would allow taxpayers disaster loss treatment for losses sustained as a result of the wildfires that occurred in Placer County during August 2009. AB 50 has been placed on the Senate Inactive File.

AB 1662 (Portantino, et al., 2009/2010) would allow special tax treatment, called disaster loss treatment, for losses sustained as a result of the August 2009 Los Angeles and Monterey Counties wildfires and the January 2010 Calaveras, Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Francisco, and Siskiyou Counties winter storms. AB 1662 is on the Senate Floor.

¹ Cf. AB 1452 (Stats. 2008, Ch. 763) disallows net operating loss deductions by suspending them for taxable years 2008 and 2009 for a taxpayer with net business income of \$500,000 or more.

AB 1690 (Chesbro, 2009/2010) would allow special tax treatment, called disaster loss treatment, for losses sustained as a result of the January 9, 2010, Humboldt County earthquake. AB 1690 is on the Senate Floor.

AB 1782 (Harkey, 2009/2010) would provide automatic special tax treatment, called disaster loss treatment, for losses sustained as a result of any governor-declared state of emergency. AB 1782 was held in the Assembly Revenue and Taxation Committee.

ABX8 31 (Portantino/Jeffries, 2009/2010) would allow special tax treatment, called disaster loss treatment, for losses sustained as a result of the August 2009 Los Angeles County wildfires. ABX8 31 failed to pass prior to the adjournment of the eighth special session of 2009/2010.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue impact:

Estimated Revenue Impact of AB 2136 Effective Immediately Upon Enactment Enactment Assumed By September 30, 2010		
2009-10	2010-11	2011-12
-\$7,000	+\$4,000	+\$3,000

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

Support/Opposition

Support

CA State Association of Counties, Regional Council of Rural Counties, Southern CA Association of Governments

Opposition:

None on file.

VOTES

Assembly Floor – Ayes: 69, Noes: 0

Senate Floor – Ayes: 34, Noes: 0

Concurrence – Ayes: 75 , Noes: 0

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